

# In re Interest of Kenneth B., Jr., et al., children under 18 years of age.

**Caselaw No.**

25 Neb. App. 578

**Filed on**

Tuesday, February 27, 2018

**Summary:** Kenneth B., Sr. (Kenneth B.), is the biological father of Derrek B. and Kenneth B., Jr. (Kenneth Jr.), and appeals the order of the Douglas County Separate Juvenile Court changing the permanency objective for the children from reunification to guardianship for the two children named above, but not for a third child, Kylie B.

In September 2014, Kenneth B. was given leave to intervene in juvenile court proceedings involving four minor children, three (listed above) of whom were deemed his biological children, and their mother. At that time, DHHS had temporary custody of the children out of the home.

In January 2015, the State filed a supplemental petition alleging Derrek, Kenneth Jr., and Kylie within the meaning of § 43-247(3)(a) due to Kenneth B.'s lack of parental care due to his incarceration; failure to provide safe and stable housing; and failure to provide proper parental care, support, and supervision for the children. After a hearing, the juvenile court agreed and found the children within the meaning of § 43-247(3)(a). Kenneth B. subsequently filed an appeal which was denied (See No. A-15-557) on December 21, 2015.

In January 2016, the juvenile court ordered the permanency objective to include a concurrent plan of "reunification/adoption." In June 2016, the State moved, but later withdrew, to terminate Kenneth B.'s parental rights. In October 2016, the permanency plan was again changed to reunification with an order for Family Group Conferencing to explore permanency through guardianship and for Kenneth B. to participate in family therapy, obtain safe housing, and comply with his parole requirements.

The latest review and permanency planning hearing was held in March 2017 where DHHS made oral recommendations that included Kenneth B. continuing to participate in services but changing the permanency plan to guardianship for the three children at issue with their grandfather. DHHS also verbally recommended Kenneth B. continue to adhere to a similar course of action highlighted in at the October 2016 hearing. The juvenile court adopted DHHS's recommendations, changing the permanency objective to guardianship and declaring it the "singular permanency plan," finding it would be "contrary to the health, safety, and welfare" of the children to be returned home "at this time," as well as that reasonable efforts had been made to return the children to the home up to that point.

Kenneth B. appeals this March 2017 order, specifically challenging the juvenile court's changing of the permanency goal from reunification to guardianship for his two sons. Kenneth B. argues that he was denied due process because he was not given notice that DHHS no longer supported its own written case plan and the State did not meet its burden to show that the written case plan were not in the children's best interests. Kenneth B. also alleges that the March 2017 changes were not supported by sufficient evidence.

The Court of Appeals analysis turns to the issue of jurisdiction and whether the juvenile court's order was a final and appealable order in that it affected his substantial right to raise his children. Citing *In re Interest of Octavio B., et al.*, 290 Neb. 589 (2015) and *In re Interest of Tayla R.*, 17 Neb. App. 595 (2009), the Court finds that the March 2017 order was not a final and appealable order because it did not cease the previous order of supervised visitation and family therapy ordered in October 2016. Further, the Court finds that the juvenile court's inclusion of the "at this time" language in the March 2017 order supports the understanding that reunification was not off the table with finality. This is further supported by DHHS's verbal recommendation, and the court's agreement, that Kenneth B. continue the October 2016 court-ordered services.

As to Kenneth B.'s argument that the language of a "singular permanency plan" signals a conclusion to the contrary, the Court opines that this alone does not "foreclose Kenneth's ability to seek rehabilitation and reunification." This, combined with the temporal language discussed earlier, undergirds the lack of finality of the March 2017 order and, therefore, the Court of Appeals dismisses Kenneth B. appeal for lack of jurisdiction.

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